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REMARKS

Claims 1-9 are currently pending in the subject application. In response to the Office action, Applicant has amended claims 1-9 to better meet the requirements of U.S. patent practice. Reconsideration of the application in its current format is hereby respectfully requested.

The Examiner has found the declaration to be defective because it is not in English. Applicant submits that there is no absolute requirement that a declaration must be in English. In fact, such a requirement runs counter to 37 C.F.R. §1.69, which actually requires the filing of an oath or declaration in a foreign language if an inventor does not understand English. 37 C.F.R. §1.69(b) requires an oath or declaration that is filed in a foreign language to be accompanied by an English translation, *unless* the oath or declaration is in accordance with PCT Rule 4.17(iv). The declaration in the subject application is a German language version of PCT form PCT/RO/101 and fully meets the requirements of PCT Rule 4.17(iv). Thus, an English translation is not required.

In the Office action, the Examiner objected to claims 7-9 as being in improper form because of the use of multiple dependent claims. In response, Applicant has amended the claims to remove multiple dependencies.

The Examiner has rejected claims 1-6 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,926,096 to Mattar et al. The Applicant traverses this rejection for at least the reasons set forth below.

In rejecting the claims, the Examiner acknowledges that the Mattar et al. patent fails to teach using a single oscillatory pulse to the pipe, measuring the response and comparing it to stored data. The Examiner, however, states (with emphasis added): "It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use *any method* that provides the desired results since the main concern here is to determine the wear in the pipe, and thus considering the

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measured values from both the sensors or applying a single pulse would be within the scope of a skilled individual." Thus, the Examiner is essentially saying that any solution to a known problem is obvious. Applicant respectfully submits that this is most definitely not a proper rationale for supporting an obviousness finding. Such a rationale would have prevented the vast majority of patented inventions from ever having been patented. As stated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, at 1396 (S.C. 2007): "[R]ejections on obviousness cannot be sustained by mere conclusory statements: instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Applicant submits that the Examiner has failed to provide any such rational underpinning. More specifically, Applicant submits that the Examiner has failed to provide any teaching, suggestion or motivation to modify the Mattar et al. patent to arrive at the claimed invention, or to enunciate any other rationale listed in the USPTO's "Examination Guidelines for Determining Obviousness under 35 USC 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex*" to support a finding of obviousness.

Based on the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

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If there are any fees resulting from this communication, please charge same to our Deposit Account No. 050877.

Respectfully submitted,

ABB Patent GmbH

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December 21, 2007
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